



COMMONWEALTH OF KENTUCKY
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**Notice of Amendments
to the Kentucky Tobacco Directory Statutes**

To: Non-Participating Manufacturers

From: Kentucky Office of the Attorney General
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Date: May 22, 2015

Re: HB 512 of 2015 (eff. 7/1/15)

Please be advised that HB 512 of 2015 was signed by Governor Steve Beshear on March 23, 2015 and includes numerous changes to the Kentucky Escrow and Directory statutes governing the certification of Non-Participating Manufacturers on the Kentucky tobacco directory of approved brands. This notice is intended to describe these changes and NPMs will need to comply with the new requirements to remain on the directory going forward.

Major changes for 2015:

- 1) NPMs must post a financial instrument with the Office of Attorney General beginning with the third quarter, 2015 to remain on the directory.*

HB 512 requires that all NPMs wishing to remain on the tobacco directory post a financial instrument such as a corporate surety bond with the Office of Attorney General in an amount of \$50,000 or the highest amount of escrow deposited in any of the last twelve quarters by the NPM. The purpose of this requirement is to secure compliance with the escrow requirement. "Financial



instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

If escrow is not deposited in the proper amount each quarter, the Office of the Attorney General may: (1) delist the NPM; (2) initiate a civil action against the NPM; and/or (3) execute on the financial instrument from the NPM to satisfy the default. If you have questions about the amount of the financial instrument, please contact our office. The first bond must be filed with our office by June 22, 2015.

2) NPMs whose products are imported into the United States must have their importers certify that they are in compliance with applicable law and they agree to joint and several liability with the manufacturer for any default in escrow.

Each NPM which has brands imported shall provide a listing of and a declaration from each of its importers of any of its brand families. The declaration shall state the following:

- The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees;
- The importer consents to personal jurisdiction in this state for the purpose of claims by the state for any obligation to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of any reasonable costs and expenses of investigation or prosecution, including attorneys' fees;
- The importer has appointed a registered agent for service of process in this state according to the same requirements established for the nonparticipating manufacturer as provided in Section 6 of this Act;
- The importer holds a valid permit under 26 U.S.C. sec. 5713;

- The importer is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and
- The importer has complied with KRS 138.130 to 138.205, 248.752, and 248.754, and any administrative regulations promulgated thereunder.

These requirements must be met by the beginning of the third quarter (July 1, 2015).

3) NPM products which are delisted from the directory after the 30-day notice may not be stamped or sold after the removal date.

Major Changes for 2016 annual certification:

1) NPMs must certify no criminal convictions in the prior ten years involving cigarette sales.

NPMs will be required to certify that they or their officers or managers have not, for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence, been convicted of or plead guilty to:

- A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
- A crime involving fraud, falsification of records, improper business transactions, or reporting.

2) NPMs must give a full disclosure of any removals or notices of removal from other state directories, which may be used as a basis to deny certification.

New certification forms will be available for 2016.